

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

Stuart Frank Delery

2. **Position**: State the position for which you have been nominated.

Assistant Attorney General, Civil Division

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

4. **Birthplace**: State date and place of birth.

New Orleans, Louisiana, 1968

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Yale Law School
1990-1993
J.D., June 1993

University of Virginia
1986-1990
B.A. with Highest Distinction, May 1990

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

United States Department of Justice

950 Pennsylvania Avenue NW

Washington, DC 20530

January 2009-present

Acting Assistant Attorney General, Civil Division (March 2013-present; March 2012-November 2012)

Principal Deputy Assistant Attorney General, Civil Division (November 2012-present)

Senior Counselor to the Attorney General (August 2010-March 2012)

Associate Deputy Attorney General (February 2010-August 2010)

Chief of Staff and Counselor to the Deputy Attorney General (January 2009-February 2010)

Wilmer Cutler Pickering Hale and Dorr LLP (formerly Wilmer, Cutler & Pickering)

1875 Pennsylvania Avenue NW

Washington, DC 20006

November 1995-January 2009

Partner (January 2001-January 2009)

Counsel (January 2000-December 2000)

Associate (November 1995-December 1999)

Supreme Court of the United States

1 First Street NE

Washington, DC 20543

August 1994-August 1995

Law Clerk to Justice Sandra Day O'Connor and Justice (Ret.) Byron R. White

United States Court of Appeals for the Eleventh Circuit

300 N. Hogan Street

Jacksonville, FL 32202

August 1993-August 1994

Law Clerk to then-Chief Judge Gerald Bard Tjoflat

Yale University

221 Whitney Avenue (Office of Human Resources)

New Haven, CT 06511

January-May 1993

Teaching Assistant

Crowell & Moring

1001 Pennsylvania Avenue NW

Washington, DC 20004

May-July 1992

Summer Associate

McGlinchey Stafford PLLC (formerly McGlinchey Stafford Mintz Cellini & Lang)

601 Poydras Street

12th Floor

New Orleans, LA 70130
May-June 1991; August 1992
Summer Associate

Orleans Parish District Attorney's Office
619 South White Street
New Orleans, LA 70119
July-August 1991
Summer Law Clerk

Yale University
221 Whitney Avenue (Office of Human Resources)
New Haven, CT 06511
January-May 1991
Teaching Assistant

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have never served in the military. I registered for the selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

John H. Pickering Pro Bono Award, Wilmer Cutler & Pickering, 2003
Articles Editor, Yale Law Journal, 1992-1993
Thomas Swann Barristers' Union, Prize Trial Finalist, 1993
Benjamin N. Cardozo Prize for Best Moot Court Brief, Yale Law School, 1992
Edward & Barbara Younger Award for the Distinguished Major in American History,
University of Virginia, 1990
Phi Beta Kappa, 1989

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Advisory Committee on Civil Rules of Practice and Procedure (ex officio member, 2012-present)
Board of Directors, Washington Council of Lawyers (2003-2007)
Executive Council, Lawyers' Committee for the Shakespeare Theatre (2002-2006)
District of Columbia Bar (1996-present) (no office held)
Gaylaw (Gay and Lesbian Attorneys of Washington) (1996-2000, est.)

American Bar Association (1993-2009) (no office held)
Virginia State Bar (1993-present) (no office held)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

District of Columbia Bar, 1996

Virginia State Bar, 1993 (admitted Supreme Court of Virginia 1995) (currently Associate, or inactive, status)

There have been no lapses in membership, although as noted I am currently on inactive status in Virginia. I elected Associate, or inactive status, in 1996 after I was admitted to practice in the District of Columbia, where my office was located. In 2000, I resumed active status in Virginia in order to join the bars of the federal district courts there. After joining the government in 2009, I again took Associate status because I did not need to maintain active status in multiple state bars.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2003

U.S. Court of Appeals for the First Circuit, 2006

U.S. Court of Appeals for the Second Circuit, 2007 (renewed 2012)

U.S. Court of Appeals for the Sixth Circuit, 2001

U.S. Court of Appeals for the Ninth Circuit, 2006

U.S. Court of Appeals for the District of Columbia Circuit, 1996

U.S. District Court for the District of Columbia, 1997

U.S. District Court for the Eastern District of Michigan, 1999

U.S. District Court for the Eastern District of Virginia, 2000

U.S. District Court for the Western District of Virginia, 2005

U.S. Court of Appeals for the Armed Forces, 2003

U.S. Air Force Court of Criminal Appeals, 2008

U.S. Army Court of Criminal Appeals, 2003

U.S. Navy-Marine Corps Court of Criminal Appeals, 2003

Supreme Court of Virginia, 1995

Court of Appeals for the District of Columbia, 1996

I renewed my Second Circuit membership in 2012 shortly after the initial period expired. I did not renew my paid membership in the U.S. District Court for the District of Columbia when it expired in 2009 because since then I have been a

lawyer for the federal government. Otherwise, there have been no lapses in membership.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Alumni Association of the University of Virginia, 1990-present
Yale Law School Alumni Association, 1993-present
Foundry United Methodist Church, 1996 to present
American Constitution Society, 2003 to 2008
Rainbow Families DC, 2005-present
Palisades Swimming Pool Association, Inc., 2011-present

In addition, I have made financial contributions to charitable organizations over the years and provided legal representation to some on a pro bono basis. I have not included in the list above any organizations to which I gave funds or provided pro bono legal representation and did not otherwise participate in programmatic activities.

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To my knowledge, none of these organizations discriminates or formerly discriminated on the basis of race, sex, religion, or national origin through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

I have done my best to identify all books, articles, reports, letters to the editor, editorials and other published material, including through a review of my personal files and searches of publicly available electronic databases. Despite my

searches, there may be other materials that I have been unable to identify, find, or remember. I have located the following:

“GIs have resources to keep scammers at bay,” *Stars and Stripes*, March 4, 2013, page 12. Copy Supplied.

“Fighting scams that target the military,” *Gosport*, Naval Air Station Pensacola, January 11, 2013, page 3. Copy Supplied.

“The Real Cost of Cheap Online Meds,” Department of Justice Blog, April 26, 2012. Copy Supplied.

“Fighting for the Crime Victims Who Don’t Make Headlines,” AARP Blog, April 25, 2012. Copy Supplied.

“Special Considerations Applicable to Bankruptcy Trustee or Examiner Investigations,” in *Internal Corporate Investigations*, Business Law Monographs, Vol. C5 (Matthew Bender 2004) (with Andrew N. Goldman). Copy Supplied.

While I was in private practice (and particularly early in my career), it is possible that I worked on “client newsletters” for the law firm on current developments in the law. However, I cannot recall any specific newsletter. I have done my best to identify any such newsletter I prepared or contributed to, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, I have been unable to identify, find or remember any such materials.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have done my best to identify any reports, memoranda, or policy statements I prepared or contributed to, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, I have been unable to identify, find or remember any such materials.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have done my best to identify all official statements or other communications relating to public policy or legal interpretation, including through a review of my

personal files and searches of publicly available electronic databases. Despite my searches, there may be other items I have been unable to identify, find, or remember. I have located the following:

Letter to Judge David G. Campbell, Chair, Advisory Committee on Civil Rules, and to Judge John G. Koeltl, Chair, Duke Subcommittee, February 6, 2013, regarding proposed revisions to discovery rules. Copy Supplied.

Meeting of the Committee on Rules of Practice and Procedure, Judicial Conference of the United States, Boston, MA, January 3-4, 2013. Only draft minutes are available at this time. Copy Supplied.

Letter to Judge David G. Campbell, Chair, Advisory Committee on Civil Rules, and to Judge Paul Grimm, Chair, Discovery Subcommittee, December 4, 2012, regarding proposed revision to Fed. R. Civ. P. 37(e). Copy Supplied.

Meeting of the Civil Rules Advisory Committee, Washington, D.C., November 2, 2012. Only draft minutes are available at this time. Copy Supplied.

Oversight Hearing, Subcommittee on Courts, Commercial and Administrative Law, Committee on the Judiciary, U.S. House of Representatives, May 31, 2012. Copies of prepared testimony and hearing transcript supplied.

Minutes, Meeting of the Civil Rules Advisory Committee, Ann Arbor, MI, March 22-23, 2012. Copy Supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have done my best to identify transcripts or recordings of all speeches or talks I have delivered, including through a review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

Second Annual Consumer Protection Summit, Georgetown University Law Center, Washington, DC, March 8, 2013. Copy Supplied.

Pen and Pad Briefing Announcing Indictments Related to Peanut Corporation of America, Department of Justice, Washington, DC, February 21, 2013. Announcement of enforcement action. Copy Supplied.

National Consumers League Fraud.org Relaunch Event, Washington, DC, February 20, 2013. The subject was the Civil Division's consumer protection work. Copy Supplied.

Press Conference Announcing Lawsuit Against S&P, Department of Justice, Washington, DC, February 5, 2013. Announcement of enforcement action. Copy Supplied.

Pensacola Naval Air Station, Pensacola, FL, December 10, 2012. The subject was the Civil Division's work on behalf of servicemembers. Copy Supplied.

Pen and Pad Briefing Announcing Record Civil FY 2012 Recoveries, Department of Justice, Washington, DC, December 4, 2012. Copy Supplied.

Press Conference Announcing "Operation Lost Opportunity," Federal Trade Commission, Washington, DC, November 15, 2012. Announcement of enforcement actions. Copy Supplied.

Training Seminar on False Claims Act, Department of Justice, Washington, DC, October 16, 2012. Introduction to the seminar and overview of the Civil Division's False Claims Act work. Copy Supplied.

Taxpayers Against Fraud Conference, Washington, DC, September 13, 2012. The subject was the Civil Division's False Claims Act work and related matters. Copy Supplied.

Wright Patterson Air Force Base, Dayton, OH, July 27, 2012. The subject was the Civil Division's work on behalf of servicemembers. Copy Supplied.

Training Seminar for Office of Immigration Litigation, National Advocacy Center, Columbia, SC, July 11, 2012. Introduction to the seminar and overview of the Civil Division's immigration work. Copy Supplied.

Press Conference Announcing Global Resolution with GlaxoSmithKline, Department of Justice, Washington, DC, July 2, 2012. Announcement of enforcement action. Copy Supplied.

American Bar Association's Ninth National Institute on the Civil False Claims Act and Qui Tam Enforcement, Washington, DC, June 7, 2012. The subject was the Civil Division's False Claims Act work. Copy Supplied.

American Bar Association Internal Corporate Investigations and Forum for In-House Counsel, San Francisco, CA, May 17, 2012. The subject was the Civil Division's anti-fraud work, particularly in the area of health care fraud. Copy Supplied.

White House LGBT Conference on Families, Minneapolis, MN, April 28, 2012. The subject was some of the Department of Justice's work of interest to families with gay and lesbian members. Copy Supplied.

Lawrence v. Texas Panel, George Washington Law School (sponsored by American Constitution Society), Washington, DC, September 29, 2008. I have not been able to locate prepared remarks, notes, a transcript, or a recording.

Presentation on the Supreme Court's decision in *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148 (2008), Wilmer Cutler Pickering Hale and Dorr LLP, Washington, DC, February 22, 2008. I have not been able to locate prepared remarks, a transcript, or a recording.

Investigations Workshop, Wilmer Cutler Pickering Hale and Dorr LLP, May 31, 2007. My subject was types of internal corporate investigations and issues that arise. I have not been able to locate prepared remarks, a transcript, or a recording; I did locate a brief handwritten outline. Copy Supplied.

Civil Liberties Class (seminar for 12th graders), Maret School, 3000 Cathedral Avenue NW, Washington, DC 20008, March 15, 2007. I have not been able to locate prepared remarks, notes, a transcript, or a recording.

Harvard Law School Gay & Lesbian Legal Advocacy Conference, March 2-3, 2007. I spoke on two panels, "What does *Lawrence v. Texas* Mean for the Future of 'Don't Ask, Don't Tell?'" and "The Contours of Judicial Deference to Military Personnel Policies." The sessions were transcribed and published at 14 Duke J. of Gender Law & Policy 1204, 1229 (2007). Copy Supplied.

FAIR Forum, Yale Law School, 127 Wall Street, New Haven, CT 06511, October 5, 2006, panelist on session entitled "Achieving Equality: Strategies for Defeating Don't Ask Don't Tell." I have not been able to locate prepared remarks, notes, a transcript, or a recording.

Panelist (with Susan Markel, Chief Accountant of the SEC's Division of Enforcement), SEC Investigations in a Sarbanes-Oxley World, Women's Bar Association of the District of Columbia, 2020 Pennsylvania Avenue, NW, Suite 446, Washington, DC 20006, 2005 (exact date unknown). I have not been able to locate prepared remarks, notes, a transcript, or a recording.

Panel on "Don't Ask, Don't Tell," Suffolk University Law School, 120 Tremont Street, Boston, MA 02108, 2005 (exact date unknown). I have not been able to locate prepared remarks, notes, a transcript, or a recording.

Center on Adoption Policy Conference, "Gay and Lesbian Adoption: Past, Present and Future," New York Law School, 185 West Broadway, New York, NY 10013, May 20, 2005. I spoke on one of several panels, and my topic was "Appellate Litigation Challenging Gay and Lesbian Adoption." I have not been able to locate prepared remarks, notes, a transcript, or a recording.

Luncheon in Honor of Judge Gerald Bard Tjoflat's 35 Years on the Federal Bench, Jacksonville, FL, May 1, 2005. I have not been able to locate prepared remarks, notes, a transcript, or a recording.

Military Cases Panel, Lavender Law Conference of the National LGBT Bar Association, Minneapolis, MN, October 1, 2004. I have not been able to locate prepared remarks, notes, a transcript, or a recording.

Corporations Class (Prof. Michael Diamond), Georgetown University Law Center, 600 New Jersey Ave NW, Washington, DC 20001, October 8, 2002. I spoke to the class about my experience representing the Special Investigative Committee of the Board of Enron Corp. I have not been able to locate prepared remarks, a transcript, or a recording. I did locate a handwritten outline. Copy Supplied.

I served as a presenter at various additional WilmerHale internal training workshops and seminars (including training on taking and defending depositions and issues in handling internal and SEC investigations). I have not been able to locate records about or remember other specific occasions.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have done my best to identify all interviews given, including through a review of my personal files and publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

On March 8, 2013, I was interviewed by the Consumerist for the article entitled "Scammers Have Servicemembers In Their Sights: The DOJ Says It's Time to Fight Back." Copy Supplied.

On March 7, 2013, I was interviewed by Federal News Radio concerning the Civil Division's work on behalf of servicemembers. The audio is available at:

[http://www.federalnewsradio.com/85/3242555/Federal-Drive-Interviews----](http://www.federalnewsradio.com/85/3242555/Federal-Drive-Interviews----March-7-2013)
March-7-2013

On December 14, 2012, I was interviewed by Federal News Radio concerning the Department of Justice's FY 2012 False Claims Act results. The audio is available at: <http://www.federalnewsradio.com/?nid=85&sid=3157072>

In July 2005, I was interviewed by Peter Baker of the Washington Post, in connection with an article about Justice O'Connor's resignation from the Supreme Court. The article, "Supreme Court Justice O'Connor Resigns," appeared on July 2, 2005. Copy Supplied.

I have been quoted in other articles based on statements I made in court filings or arguments, or in Department of Justice press releases, but I did not give interviews on those occasions.

13. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have never been a candidate for public office. I have held the following positions in the federal government:

Acting Assistant Attorney General, Civil Division, designated by the President (March 2013-present; March 2012-November 2012)

Principal Deputy Assistant Attorney General, Civil Division, appointed by the Attorney General (November 2012-present)

Senior Counselor to the Attorney General, appointed by the Attorney General (August 2010-March 2012)

Associate Deputy Attorney General, appointed by the Attorney General (February 2010-August 2010)

Chief of Staff and Counselor to the Deputy Attorney General, appointed by the Attorney General (January 2009-February 2010)

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 2008, I was a volunteer for President Obama's campaign. During both the primaries and the general election, I worked on legal issues related to voter

protection. I also did some vetting work for the campaign. In 2004, I volunteered on voter protection legal issues for Senator Kerry's campaign.

14. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk to the Hon. Gerald Bard Tjoflat, United States Court of Appeals for the Eleventh Circuit (August 1993-August 1994) and to Justices Sandra Day O'Connor and Byron R. White (Ret.), United States Supreme Court (August 1994-August 1995).

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
January 2009-present
Acting Assistant Attorney General, Civil Division (March 2013-present;
March 2012-November 2012)
Principal Deputy Assistant Attorney General, Civil Division (November
2012-present)
Senior Counselor to the Attorney General (August 2010-March 2012)
Associate Deputy Attorney General (February 2010-August 2010)
Chief of Staff and Counselor to the Deputy Attorney General (January
2009-February 2010)

Wilmer Cutler Pickering Hale and Dorr LLP (WilmerHale) (formerly
Wilmer, Cutler & Pickering)
1875 Pennsylvania Avenue NW
Washington, DC 20006
November 1995-January 2009
Partner (January 2001-January 2009)
Counsel (January 2000-December 2000)
Associate (November 1995-December 1999)

Supreme Court of the United States
1 First Street NE
Washington, DC 20543
August 1994-August 1995
Law Clerk to Justice Sandra Day O'Connor and Justice (Ret.) Byron R.
White

United States Court of Appeals for the Eleventh Circuit
300 N. Hogan Street
Jacksonville, FL 32202
August 1993-August 1994
Law Clerk to then-Chief Judge Gerald Bard Tjoflat

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

I was a federal law clerk for then-Chief Judge Gerald Bard Tjoflat of the United States Court of Appeals for the Eleventh Circuit from 1993 to 1994 and for Justice Sandra Day O'Connor and Justice (Ret.) Byron R. White of the Supreme Court of the United States from 1994 to 1995.

From 1995 until 2009, I was in private practice at the law firm of Wilmer Cutler Pickering Hale and Dorr LLP (formerly Wilmer, Cutler & Pickering). I became a partner on January 1, 2001; before that, I was an associate and later a counsel at the firm. I was a member of the Securities and Litigation Departments and the Appellate and Supreme Court Litigation Practice Group.

I joined the U.S. Department of Justice in 2009. For just over three years, I served in senior positions in the Department's leadership offices. In those roles, I advised the Department's leadership on a range of matters as requested. My specific portfolios focused on civil litigation, appellate matters, and national security litigation and policy issues. Since March 2012, as the Acting Assistant Attorney General for the Civil Division and as Principal Deputy Attorney General, I have supervised much of the federal government's civil litigation.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

During my government service from 2009 to present, my client has been the United States. I have provided legal advice to a range of government officials and have represented government officials and agencies in litigation. My work at the Department of Justice has focused primarily on civil litigation, appellate matters, and national security litigation and policy issues, although I have been involved in criminal matters as well.

When I was in private practice from 1995 to 2009, I had a range of clients, including large corporations, a public university, a national accounting firm, financial institutions, individuals, non-profit and public-interest organizations, and international organizations. The mix of my practice varied from year to year depending on which matters were active, but in general my practice fell into three categories. (1) Securities/business litigation and enforcement. I represented a range of clients in cases involving securities and other financial frauds in federal and state courts, and in enforcement proceedings by the Securities and Exchange Commission, the Department of Justice, and other regulators. (2) Internal

corporate investigations for boards of directors or board committees. (3)
Constitutional and public policy litigation. My practice in this area
focused on complex litigation, both in trial courts and on appeal,
presenting novel questions of constitutional and federal law.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

At the Department of Justice (2009-present):

- i. Indicate the percentage of your practice in:
 1. federal courts: 100%
 2. state courts of record: 0%
 3. other courts: None
 4. administrative agencies: 0%
- ii. Indicate the percentage of your practice in:
 1. civil proceedings: 90%
 2. criminal proceedings: 10%

In Private Practice (1995-2009):

- i. Indicate the percentage of your practice in:
 1. federal courts: 55%
 2. state courts of record: 5%
 3. other courts: None
 4. administrative agencies: 40%
- ii. Indicate the percentage of your practice in:
 1. civil proceedings: 95%
 2. criminal proceedings: 5%

Since March 2012, as the Acting Assistant Attorney General for the Civil Division and as Principal Deputy Assistant Attorney General, I have supervised much of the federal government's civil litigation, including with respect to the legal positions of the government in cases; authorization to initiate affirmative suits; and approval of settlements. I have personally argued three cases in courts of appeals while serving as Acting Assistant Attorney General.

From 2009 to 2012, while serving in the Office of the Attorney General and the Office of the Deputy Attorney General, I provided staff advice and assisted in the supervision of various litigation matters—mostly civil and national security matters (as well as some criminal matters)—but did not

appear in court. Much of my work involved management, including management of litigation, and policy work.

In private practice, much of my practice was in litigation. Most was in federal courts, although a small percentage was in state courts. As discussed below in response to Question 16, I also represented clients in many government investigations that never reached litigation, and conducted internal investigations for corporations and non-profit organizations.

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried three cases to judgment. I was the lead counsel for one of those cases (a jury trial in Maryland state court). I was co-counsel in the other two cases, both of which were tried in federal district court (one was a jury trial and the other a bench trial). I conducted examinations of witnesses in all three cases.

I participated in a number of other cases in trial courts that reached final decision on dispositive motions and not through settlement.

- i. What percentage of these trials were:

1. jury: 66%
2. non-jury: 33%

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not argued orally before the Supreme Court. I am a member of the Supreme Court bar.

During my time at the Department of Justice, I have worked closely with the Office of the Solicitor General on cases before the Supreme Court. As head of the Civil Division, I regularly make recommendations to the Solicitor General concerning Supreme Court cases. In that position, my name has appeared on numerous briefs filed in the U.S. Supreme Court (including briefs filed at the certiorari stage and at the merits stage). The Office of the Solicitor General (OSG) was one of the components that I monitored for the Attorney General and Deputy Attorney General, so I consulted with OSG lawyers on Supreme Court cases in those positions as well. I have also participated in a number of moot courts for the Solicitor General and other OSG lawyers.

In private practice at WilmerHale, I was a member of the Supreme Court and Appellate Litigation Practice Group. I participated in drafting briefs for the Supreme Court. More generally, I consulted on a range of Supreme Court matters and participated in a number of moot courts for other lawyers who were arguing at the Court.

I am listed on the following briefs filed in the Supreme Court, according to searches of electronic databases.

Merits Briefs

Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc., No. 12-10
Arizona v. United States, No. 11-182
United States v. Windsor, No. 12-785
Clapper v. Amnesty Int'l USA, No. 11-1025
Horne v. U.S. Dep't of Agriculture, No. 12-123
Kloeckner v. Solis, No. 11-184
Levin v. United States, No. 11-1351
Millbrook v. United States, No. 11-10362
Moncrieffe v. Holder, No. 11-702
Sebelius v. Auburn Reg'l Med. Ctr., No. 11-1231
Sebelius v. Cloer, No. 12-236
United States v. Bormes, No. 11-192
Gratz v. Bollinger, No. 02-516
Grutter v. Bollinger, No. 02-241
McCarver v. North Carolina, No. 00-8727, Brief of Petitioner Ernest P. McCarver

Amicus Curiae Briefs at Merits Stage

Already, LLC v. Nike, Inc., No. 11-982
American Trucking Assocs., Inc. v. City of Los Angeles, No. 11-798
Association for Molecular Pathology v. Myriad Genetics, Inc., No. 12-398
Bowman v. Monsanto Co., No. 11-796
Bullock v. BankChampaign, N.A., No. 11-1518
Chafin v. Chafin, No. 11-1347
Dan's City Used Cars, Inc. v. Pelkey, No. 12-52
Delia (Wos) v. E.M.A., No. 12-98
Genesis Healthcare Corp. v. Symczyk, No. 11-1059
Hillman v. Maretta, No. 11-1221
Hollingsworth v. Perry, No. 12-144
Kiobel v. Royal Dutch Petroleum Co., No. 10-1491 (supplemental brief)
Kirtsaeng v. John Wiley & Sons, Inc., No. 11-697
Lozman v. City of Riviera Beach, No. 11-626
Marx v. General Revenue Corp., No. 11-1175
Mutual Pharm. Co. v. Bartlett, No. 12-142
Kennedy v. Louisiana, No. 07-343, Brief of the National Association of Criminal Defense Lawyers, et al., as Amici Curiae in Support of Petitioners

Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc. and Motorola, Inc., No. 06-43, Brief of Business Roundtable as Amicus Curiae in Support of Respondents

Adarand Constructors, Inc. v. Mineta, No. 00-730, Brief of Lawyers' Committee for Civil Rights Under Law, et al., as Amici Curiae in Support of Respondents

Boy Scouts of America v. Dale, No. 99-699, Brief of Parents, Families and Friends of Lesbians and Gays, Inc., et al. as Amici Curiae in Support of Respondent

Board of Regents v. Southworth, No. 98-1189, Brief of Wisconsin Student Public Interest Research Group, et al., as Amici Curiae in Support of Petitioner

Petitions for a Writ of Certiorari

Federal Commc'ns Comm'n v. CBS Corp., No. 11-1240

Mayorkas v. De Osorio, No. 12-930

National Labor Relations Bd. v. Noel Canning, No. 12-1281

Office of Pers. Mgmt. v. Golinski, No. 12-16

Office of Pers. Mgmt. v. Pedersen, No. 12-302

Sebelius v. Auburn Reg'l Med. Ctr., No. 11-1231

Sebelius v. Cloer, No. 12-236

United States v. Beer, No. 12-801

United States v. Windsor, No. 12-307

United States Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc., No. 12-10

United States Dep't of Health & Human Servs. v. Massachusetts, No. 12-15

Briefs in Opposition to Certiorari

Akapo v. Holder, No. 11-7854

Alabama v. United States, No. 12-884

Al Alwi v. United States, No. 11-7700

Alden Leeds, Inc. v. United States, No. 11-1486

Al Kandari v. United States, No. 11-1054

Almerfedí v. Obama, No. 11-683

Almy v. Sebelius, No. 12-356

America v. Mills, No. 11-855

American Snuff Co. v. United States, No. 12-521

Beineke v. Kappos, No. 12-580

Bright v. Holder, No. 11-890

Byron v. Shinseki, No. 12-389

California Table Grape Comm'n v. Delano Farms Co., No. 11-1371

CCA Assocs. v. United States, No. 11-1352

Chaidy v. Holder, No. 12-332

Chhabra v. Holder, No. 12-411

Cordova-Soto v. Holder, No. 12-95

Craven v. Cobell, No. 12-234

De La Rosa v. Holder, No. 12-152

Djadjou v. Holder, No. 12-173

Empresa Cubana Exportadora de Alimentos y Productos Varios v. Dep't of the Treasury, No. 11-945
First Annapolis Bancorp, Inc. v. United States, No. 11-912
Frederick v. Shinseki, No. 12-749
Gaitan v. Holder, No. 11-1525
Garcia-Torres v. Holder, No. 11-1226
Good Bear v. Cobell, No. 12-355
Hadden v. United States, No. 11-1197
Hall v. Sebelius, No. 12-262
Henry Ford Health Sys. v. Dep't of Health & Human Servs., No. 11-975
Hepting v. AT&T Corp., No. 11-1200
Hitachi Home Elecs. v. United States, No. 12-148
Holistic Candles & Consumers Assoc. v. Food & Drug Admin., No. 11-1454
Horne v. United States Dep't of Agriculture, No. 12-123
Huang v. Napolitano, No. 12-639
Igartua v. United States, No. 11-876
Initiative & Referendum Inst. v. U.S. Postal Serv., No. 12-722
Kwong v. Holder, No. 12-150
Lara v. Office of Pers. Mgmt., No. 11-915
Latif v. Obama, No. 11-1027
Levin v. United States, No. 11-1351
Lopez v. United States, No. 11-1367
Macarelli ex rel. Halloran v. United States, No. 11-838
Marcavage v. Saperstein, No. 11-1402
Marceau v. Blackfeet Housing Authority, No. 12-278
McGee v. Dep't of the Air Force, No. 11-8292
Michigan Dep't of Cmty. Health v. Sebelius, No. 12-589
Millbrook v. United States, No. 11-10362
Mirmehdi v. United States, No. 12-522
Montgomery v. Kappos, No. 12-182
Najbar v. United States, No. 11-967
Pasicov v. Holder, No. 12-493
Pecore v. United States, No. 12-250
Pierre v. Holder, No. 11-8335
Puerto Rico v. United States, No. 11-837
Renda Marine, Inc. v. United States, No. 12-699
Roeder v. Islamic Republic of Iran, No. 11-730
Sanchez v. United States, No. 12-335
Semper v. United States, No. 12-710
Sherley v. Sebelius, No. 12-454
Sioux Honey Ass'n v. United States, No. 11-1337
Spirit Airlines v. Dep't of Transp., No. 12-656
Tenenbaum v. Sony BMG Music Entm't, No. 11-1019
Thomas-Rasset v. Capitol Records, Inc., No. 12-715
Three-Dimensional Media Group v. Kappos, No. 12-48
Torres-Rendon v. Holder, No. 11-1056
Trinidad v. Thomas, No. 12-6615

Velazquez-Otero v. Holder, No. 11-1321
Veterans for Common Sense v. Shinseki, No. 12-296
Yang v. Holder, No. 11-1119
Gratz v. Bollinger, No. 02-516, Brief for Respondents Lee Bollinger, et al.
Grutter v. Bollinger, No. 02-241, Brief for Respondents Lee Bollinger, et al.
Patterson v. Gratz, No. 02-571, Brief for Respondents Lee Bollinger, et al.

Amicus Curiae Briefs at Certiorari Stage

American Trucking Assocs., Inc. v. City of Los Angeles, No. 11-798
Bank Melli Iran New York Representative Office v. Weinstein, No. 10-947
Bowman v. Monsanto Co., No. 11-796
DIRECTV, Inc v. Levin, No. 10-1322
EM Ltd. v. Republic of Argentina, No. 11-604
Faculty Senate of Florida Int'l Univ. v. Florida, No. 10-1139
GlaxoSmithKline v. Classen Immunotherapies, Inc., No. 11-1078
Hillman v. Maretta, No. 11-1221
Retractable Techs., Inc. v. Becton, Dickinson & Co., No. 11-1154
Rubin v. Islamic Republic of Iran, No. 11-431
Saint-Gobain Ceramics & Plastics, Inc v. Siemens Med. Solutions USA, Inc., No. 11-301
Lofton, et al. v. Florida Dep't of Children and Families, et al., No. 04-478, Brief of Child Welfare League of America, et al., as Amici Curiae in Support of Petitioners

Miscellaneous

Pedersen v. Office of Pers. Mgmt., No. 12-231 (brief in response to petition for certiorari)
Windsor v. United States, No. 12-63 (brief in response to petition for certiorari)
Liberty Univ. v. Geithner, No. 11-438 (brief in response to petition for rehearing)
Bipartisan Legal Advisory Group of the U.S. House of Representatives v. Windsor, No. 12-785 (brief in response to petition for certiorari)

15. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and

- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
- 1. *ACLU v. CIA*, 710 F.3d 422, (D.C. Cir. 2013)
U.S. Court of Appeals for the District of Columbia Circuit
Chief Judge Garland and Judges Tatel and Griffith

I represented the Central Intelligence Agency in this Freedom of Information Act (“FOIA”) case. Plaintiff filed a FOIA request seeking any records in the possession of the CIA related to targeted killing by the government of individuals by unmanned aerial vehicles, or “drones.” The CIA issued a *Glomar* response, indicating that it could neither confirm nor deny the existence or nonexistence of records responsive to plaintiffs’ request pursuant to FOIA Exemptions 1 and 3. The district court upheld the CIA’s *Glomar* response on summary judgment. On appeal, plaintiffs argued that the government waived any FOIA exemptions by officially acknowledging the existence of a drone program. Before oral argument, the CIA moved to remand the case to the district court for consideration of the effect, if any, of the government’s acknowledgement of certain government records in another pending case. That motion was denied, and the court of appeals held argument on September 20, 2012. I presented the argument for the government. The court of appeals reversed, concluding that the CIA’s original *Glomar* response was not justified but remanding for further proceedings to consider what, if any, information would need to be disclosed under FOIA.

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- 2. *Windsor v. United States*, 699 F.3d 169 (2nd Cir. 2012)
U.S. Court of Appeals for the Second Circuit
Chief Judge Jacobs and Judges Straub and Droney

Massachusetts v. U.S. Dep't of Health and Human Services; Gill v. Office of Personnel Management, 682 F.3d 1 (1st Cir. 2012)

U.S. Court of Appeals for the First Circuit

Chief Judge Lynch and Judges Torruella and Boudin

I represented the government in these two appeals. Section 3 of the Defense of Marriage Act (DOMA) defines the term “marriage” for all purposes under federal law, including the provision of federal benefits, as “only a legal union between one man and one woman as husband and wife.” 1 U.S.C. § 7. These cases presented the question whether Section 3 of DOMA violates the Fifth Amendment’s guarantee of equal protection of the laws as applied to persons of the same sex who are legally married under the laws of their State. The First Circuit case also presented the question whether Section 3 violates the Tenth Amendment. In February 2011, the Attorney General notified Congress that the President had determined that classifications based on sexual orientation warrant heightened constitutional scrutiny and that, under that standard, Section 3 violates equal protection. Following the Attorney General’s announcement, the Bipartisan Legal Advisory Group of the United States House of Representatives (BLAG) intervened in these cases to present arguments in defense of the constitutionality of Section 3. I presented oral argument in the courts of appeals on behalf of the United States and the Executive Branch agencies in these cases. Both courts held that Section 3 is unconstitutional. The Supreme Court has granted the government’s petition for a writ of certiorari in *Windsor* and held oral argument on March 27, 2013.

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3. *In re Bristol-Myers Squibb Derivative Litigation (Bellikoff v. PricewaterhouseCoopers LLP, et al.)*, 2008 WL 4876804 (2nd Cir. 2008).
U.S. Court of Appeals for the Second Circuit
Judges Walker, Parker and Raggi

This case was part of a broader set of litigation against Bristol-Myers Squibb (BMS) following the company's restatement of financial statements for the years

1999-2002. I represented PricewaterhouseCoopers LLP (PwC) in these matters. PwC served as BMS's independent auditor during the relevant time. Several shareholder derivative actions were filed against BMS officers and directors, and against PwC. In this case, the district court granted PwC's motion to dismiss. The court found that plaintiffs had neither made a pre-suit demand on the BMS Board of Directors, as required under the relevant state law, nor pled with particularity that such a demand would have been futile because the BMS directors lacked the necessary independence to consider potential claims against PwC. Plaintiffs appealed, and I took the lead on briefing the appeal. The court of appeals decided the case without oral argument and affirmed, concluding that plaintiffs had not satisfied the demand requirement for derivative suits on behalf of a corporation and that the BMS Board had opposed the derivative litigation.

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4. *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc. and Motorola, Inc.*, 552 U.S. 148 (2008).
Brief for Business Roundtable as Amicus Curiae in Support of Respondents.

The issue in this case was whether the private right of action recognized under Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 extends to participants in a "scheme to defraud" who themselves did not employ a deceptive device on which a plaintiff relied. With others at WilmerHale, I drafted an amicus brief on behalf of the Business Roundtable, an association of chief executive officers of leading U.S. companies, urging the Supreme Court to reject this expansion of the private right of action. The brief argued principally that the Court should not extend the private right of action into new territory without an indication that Congress had authorized or approved the extension, and that the Court did not owe deference to the SEC's position in this circumstance. The Supreme Court held that defendants can only be held liable if their own conduct satisfies each of the elements for §10(b) liability and that a plaintiff therefore

must prove reliance, in making a decision to purchase or hold a security, upon a material misrepresentation or omission by the defendant itself.

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5. *Cook v. Gates*, 528 F.3d 42 (1st Cir. 2008)
U.S. Court of Appeals for the First Circuit
Judges Howard, Campbell, and Saris (D. Mass.)

I represented a group of gay and lesbian servicemembers who were discharged from the Armed Forces under 10 U.S.C. 654, known as the “Don’t Ask, Don’t Tell” law. Plaintiffs challenged “Don’t Ask, Don’t Tell” on its face and as

applied as violating due process, equal protection, and the First Amendment. The district court granted the government's motion to dismiss the appeal, and the court of appeals affirmed. On the due process claim, the First Circuit concluded that *Lawrence v. Texas* required a balancing of constitutional interests that went beyond rational basis review, but concluded that several factors (including deference to military judgments) required the statute to be upheld. The court also rejected the equal protection and First Amendment challenges. Judge Saris dissented and would have allowed the First Amendment claim to proceed. I oversaw the briefing and argued the case in the district court and the court of appeals.

Co-counsel at WilmerHale included:

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6. *Lorillard Tobacco Co. v. American Legacy Foundation*, 903 A.2d 728 (Del. 2006)
Delaware Supreme Court
American Legacy Foundation v. Lorillard Tobacco Co., 886 A.2d 1 (Del. Ch. 2005).

Delaware Court of Chancery (Vice Chancellor Stephen P. Lamb)

With others at WilmerHale, I represented the American Legacy Foundation, a non-profit organization established by the 1998 Master Settlement Agreement (MSA) between 46 states and the major cigarette manufacturers with the public health mission of reducing youth smoking. The issue in the case was whether the Foundation's anti-smoking advertising campaign violated the prohibition against "vilification" and "personal attacks" in the MSA, or otherwise did not meet the agreement's terms. Lorillard asked the Court to order the Foundation to return more than \$1 billion in payments the Foundation had received since its creation. I supervised a team of associates in completing discovery (including document discovery and fact and expert depositions) and argued a number of motions. I also worked closely with other lawyers at WilmerHale on the summary judgment briefing (almost 400 pages of briefs). The Chancery Court (Vice Chancellor Stephen P. Lamb) adopted definitions of "vilification" and "personal attack" very close to those the Foundation proposed and held that none of the Foundation's ads violated the MSA. I then worked extensively on the briefing before the Delaware Supreme Court, which affirmed the judgment of the Chancery Court.

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7. *Grutter v. Bollinger*, 539 U.S. 306 (2003)

Court of Appeals (en banc): 288 F.3d 732 (6th Cir. 2002)
District Court: 137 F.Supp.2d 821 (E.D. Mich. 2001) (Friedman, J.)

Gratz v. Bollinger, 539 U.S. 244 (2003)
District Court: 122 F.Supp.2d 811 (E.D. Mich. 2000) (Duggan, J.)

With others at Wilmer, Cutler & Pickering, I represented the University of Michigan and its Law School in lawsuits challenging their consideration of race in admissions, from the trial courts through the Supreme Court. In the district court, I took a leading role in working with social science experts on the educational benefits of diversity and with statisticians on analysis of the admissions data. At trial in the law school case, I conducted the direct examination of the law school's statistics expert and cross-examined the plaintiff's statistician. I also participated in briefing the legal issues. On appeal, I participated in drafting the briefs and preparing counsel for oral arguments in the court of appeals and the Supreme Court. In *Grutter*, the Supreme Court upheld the consideration of race as one factor among many in admissions, and upheld the law school's admissions policy; in *Gratz*, the Court invalidated the undergraduate admissions system's consideration of race as insufficiently tailored.

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8. *McBride and Associates, Inc. v. BAE Systems Mission Solutions, Inc., et al.*, Civil Action No. 01-1090-A (E.D. Va. 2001)
U.S. District Court for the Eastern District of Virginia (no single assigned judge)

I was the lead lawyer representing BAE Systems Mission Solutions, Inc., a corporate affiliate, and two individual officers in this successful defense of a breach of contract and fraud action arising out of the sale of a unit that supplied computer equipment to the federal government. The issue in the case was whether the purchaser had received sufficient and accurate information about the pricing structure on a particular subcontract. I led a team of lawyers through an extensive discovery process concerning the negotiations and due diligence on the transaction and then directed the summary judgment briefing. Once the summary judgment briefing was completed, the case was resolved by settlement.

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9. *Rendall-Speranza v. Nassim*, 107 F.3d 913 (D.C. Cir. 1997)
U.S. Court of Appeals for the District of Columbia Circuit
Judges Ginsburg, Sentelle and Rogers

I represented the International Finance Corporation (IFC), a member of the World Bank Group and an international, governmental organization established by multilateral treaty in 1956 to further economic development by encouraging the growth of private enterprise in less developed countries. The case involved a claim by a former employee of the IFC. The question was whether the plaintiff could use the federal courts, rather than the internal procedures provided by the IFC, to pursue the employment claim. The court of appeals held that the claim against the IFC itself was barred by the statute of limitations and the International

Organizations Immunities Act provided immunity for the IFC employee defendant international organizations like the IFC are immune from suits in U.S. courts over employment disputes as a matter of treaty and the International Organizations Immunities Act. I took the lead in drafting the appellate briefs for the IFC. This was one of several cases that I handled concerning immunities of international organizations.

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10. *The Common Fund for Non-Profit Organizations v. KPMG Peat Marwick LLP*, No. 96 Civ. 0255 (GBD) (S.D.N.Y., Jury Trial October 2000). Memorandum Opinions related to this case are at 1996 WL 551605 and 2003 WL 1108493.
Judge George B. Daniels

Plaintiff Common Fund is a non-profit membership corporation that provides investment management services to colleges, universities, and other non-profit organizations. Following discovery of unauthorized trading activity at its security lending firm that resulted in the loss of over \$100 million, Common Fund sued the securities lending firm and its principals (for securities fraud and other claims), as well as Common Fund's independent outside auditor (for professional malpractice and breach of contract). I represented Common Fund and worked extensively on essentially all aspects of this matter from 1996 through 2001, from the drafting of the complaint through post-trial motions. I oversaw significant document discovery; took and defended many depositions of fact and expert witnesses; briefed legal motions; and participated in the trial against the auditor, including by examining a witness. The jury returned a verdict for the auditor.

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16. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Department of Justice. In March 2012, I was designated by the President as acting head of the Civil Division, the largest litigating component of the Department of Justice. As Acting Assistant Attorney General and Principal Deputy Assistant Attorney General, I have supervised approximately 1,000 lawyers representing the United States, the President and Cabinet officers and agencies, and other federal officials in a wide range of matters.

The Civil Division's docket covers the full range of government activities. Its cases include defense of legal challenges to Congressional statutes, Administration policies, and federal agency actions, and damages actions against the federal government for

accidents and other liability claims. They concern federal benefit programs; commercial issues such as contract disputes, banking, insurance, patents, and debt collection; international trade matters; enforcement of immigration laws; and civil and criminal violations of consumer protection laws. Each year, lawyers in the Civil Division handle thousands of cases that collectively involve billions of dollars in claims and recoveries. In FY 2012, the Justice Department secured nearly \$5 billion in settlements and judgments in cases involving fraud against the federal government. Vigorous defense of claims against the government also protects the public fisc.

In addition to supervising the litigation of the cases themselves and making decisions about the positions the Division will take, I oversee investigations before they proceed to litigation and approve many settlements. I also work to resolve disagreements about legal issues within the Department and among client agencies.

I have devoted significant attention to the Civil Division's extensive docket of national security cases. These include defending the constitutionality of statutes authorizing the exercise of military detention authority; defending the wartime detention of individuals held at Guantanamo Bay in habeas proceedings; defending federal terrorist designations and screening provisions for travel; defending individual servicemembers and other government officials from suits seeking money damages for actions they have taken in the line of duty; and litigating FOIA requests seeking information relating to classified national security matters. The Division also defends in federal court every removal order involving terrorist and other national-security-risk aliens and litigates detention, benefits denial, and naturalization and denaturalization cases involving these individuals. In all of these areas, I have sought to ensure that the Division vigorously defends the national security interests of the United States consistent with the rule of law.

Prior to joining the Civil Division, I served for just over three years in senior positions in the Department's leadership offices, as Senior Counselor to the Attorney General (August 2010 to March 2012), Associate Deputy Attorney General (February to August 2010), and as Chief of Staff and Counselor to the Deputy Attorney General (January 2009 to February 2010). In those roles, I advised the Department's leadership on a range of matters as requested. My specific portfolios focused on civil litigation, appellate matters, and national security litigation and policy. While I did not personally handle legal arguments in court, I did often participate in cases raising significant issues of constitutional law, including cases listed in response to Question 14e above. And I worked extensively on national security litigation, including detainee habeas cases, state secrets cases, and Bivens actions against current and former government officials. I also contributed to the management of the Department, including through active involvement in the budget process.

Private Practice. A substantial portion of my work in private practice involved matters outside of litigation. In the area of securities litigation and enforcement, I represented a range of clients (including a national accounting firm, individuals, financial institutions, and corporations) in cases involving securities and other financial frauds in federal and state courts, and in enforcement proceedings by the SEC and other regulators. Many of

these matters involved representations of clients in parallel civil, criminal, and regulatory proceedings. Outside of litigation, I defended witness testimony before regulatory agencies and handled witness proffers of information, made legal and factual presentations on why it would not be appropriate for the government to bring an action, and negotiated settlements.

I also had substantial experience conducting high-profile, international internal corporate investigations for boards of directors or board committees. In these matters, the law firm was retained to conduct a thorough investigation of alleged misconduct, to make an independent evaluation of the facts, and to recommend disciplinary action or other remedial measures. Most notably, with other lawyers at the firm, I was involved of several of the most high-profile investigations of the last decade, including:

- Representation of the Special Investigative Committee of the Board of Enron Corp. in an investigation of the transactions between Enron and partnerships controlled by its former chief financial officer that led to the collapse of the company. In less than four months, our team reviewed thousands of documents, interviewed more than 65 witnesses, and produced a 200-page report.
- Representation of the Special Investigative Committee of the Board of WorldCom, Inc., chaired by former Attorney General Nicholas deB. Katzenbach, in its investigations of accounting irregularities and the company's resulting bankruptcy, then the largest bankruptcy in U.S. corporate history.

I also played a leading role in investigations related to alleged accounting issues on behalf of the Audit Committees of Royal Ahold, NV (an international food distributor and owner of supermarket chains) and Nortel Networks Corporation (a telecommunications company).

In these matters just described, I was one of several partners at the firm leading very large teams. On several other investigations, however, I was the lead lawyer – including on an investigation for a pharmaceutical company and one for a financial services firm. Much of my work in connection with government investigations and internal corporate investigations is not public.

I played significant roles in administration of the law firm. Among other things, I served as co-Vice Chair of the firm's Securities Department, part of the team responsible for managing a practice of more than 150 lawyers that is widely recognized as one of the leaders in the field. This role involved a range of day-to-day administrative activity, from preparing reports to management and monitoring productivity of lawyers to dealing with associate morale and thinking about strategic issues. I also served on the firm's Executive Committee and the committees on partner compensation and partnership elevation, as well as on a task force to study the future structure of the firm.

I have not performed lobbying activities.

17. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

During law school I served as a Teaching Assistant for an undergraduate history course at Yale College: American Political History, 1945-1984 (January-May 1991; January-May 1993). I led two discussion sections per week and graded all exams and papers for the students in those sections. I have not been able to locate a syllabus.

18. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I remain a participant in the 401(k) plan from my former law firm (although neither I nor the firm has made any new contributions since my departure). As a U.S. government employee, I participate in the Thrift Savings Plan.

19. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

None.

20. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached SF-278.

21. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached net worth statement.

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which

you have been nominated. Explain how you would address any such conflict if it were to arise.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement I have entered into with the Department's designated ethics official.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement I have entered into with the Department's designated ethics official.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

Throughout my time in private practice, I maintained an active pro bono practice on behalf of a variety of clients and in several different areas. In recognition of my record of pro bono work, I received the law firm's John H. Pickering Pro Bono Award in 2003. In addition, I served for several years on the Board of Directors of the Washington Council of Lawyers, a voluntary bar association whose mission is to promote the practice of pro bono and public interest law.

Some of my pro bono clients were individuals, others were non-profit organizations, and one was an arm of local government. To give a few examples, early in my career I worked on a team of firm lawyers who successfully overturned the conviction and death sentence of a Georgia inmate on state habeas corpus review. Later, on behalf of the board of a non-profit organization, I supervised an investigation into allegations of misconduct by a member of the management. I represented a preschool in a zoning dispute and resulting settlement. I also represented individuals and organizations in several cases related to LGBT issues. In addition to the *Cook* case listed above, I handled a six-day jury trial against a major teaching hospital on behalf of a plaintiff who claimed that the hospital had prevented him from visiting his critically ill partner because he was not family. I also filed amicus briefs on behalf of a variety of organizations in cases relating to adoption of children by gay parents and same-sex marriage.

Of particular note, in 2007 and 2008, I supervised a team of lawyers that conducted an investigation, on behalf of the Council of the District of Columbia's Office of Tax and Revenue Investigation Special Committee, into the theft of over \$48 million in District of Columbia funds by Harriette Walters, a long-time employee in the Real Property Tax Administration of the Office of Tax and Revenue. (Ms. Walters pleaded guilty to federal charges on September 15, 2008.) We prepared a 100-page report that examined the facts and circumstances surrounding Walters' scheme and to make recommendations to help prevent a recurrence of any similar scheme to steal from the taxpayers of the District of Columbia.

AFFIDAVIT

I, Stuart F. Delery, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

4/30/13

(DATE)

Stuart F. Delery

STUART F. DELERY

Kimberly J. Sasser

(NOTARY)

